

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

VALERIE KLOOSTERMAN

Plaintiffs

Civil Action No. 1:22-cv-00944
Hon. Jane M. Beckering

v.

METROPOLITAN HOSPITAL, d/b/a
UNIVERSITY OF MICHIGAN HEALTH-WEST;
RAKESH PAI, an individual; RHAE-ANN
BOOKER, an individual; MARLA COLE, an
individual; THOMAS PIERCE, an individual; and
CATHERINE SMITH, an individual.

Defendants.

**DEFENDANTS PAI, BOOKER, COLE, PIERCE AND
SMITH'S MOTION TO DISMISS PLAINTIFF'S
CORRECTED FIRST AMENDED COMPLAINT**

Defendants Rakesh Pai, Rhae-Ann Booker, Marla Cole, Thomas Pierce, and Catherine Smith, by and through their attorneys, HALL, RENDER, KILLIAN, HEATH & LYMAN, PC, respectfully move to dismiss Plaintiff Valerie Kloosterman's ("Plaintiff") Corrected First Amended Complaint (ECF No. 32) pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for the following reasons:

1. Counts VI, VII and VIII against Defendants (in both their individual and official capacities) are barred by the Eleventh Amendment to the United States Constitution. As a result, this Court lacks subject matter jurisdiction over said claims. Fed. R.Civ. P. 12(b)(1).
2. Counts I-III and VI-VIII against Defendants (in both their individual and official capacities) should be dismissed because they are not adequately pled against each Defendant. Fed. R.Civ. P. 12(b)(6).

3. Counts I-III and VI-VIII against Defendants (in both their individual and official capacities) should be dismissed because because, for additional reasons, they fail to state claims on which relief can be granted. Fed. R.Civ. P. 12(b)(6).

4. Plaintiff's claims for nominal damages against Defendants in their official capacities in Counts I-III should be dismissed because such relief is not permitted under 42 U.S.C. 1983 and/or is barred by the Eleventh Amendment. Fed. R.Civ. P. 12(b)(6).

5. Plaintiff's claims for nominal damages against Defendants in their individual capacities in Counts I-III should be dismissed based on qualified immunity. Fed. R.Civ. P. 12(b)(6).

6. Plaintiff's claims for injunctive relief against Defendants in their individual capacities in Counts I-III and VI-VIII should be dismissed because the injunctions sought relate only to their jobs. Fed. R.Civ. P. 12(b)(1).

7. Plaintiff's claims for injunctive relief against Defendants Booker, Cole, Pierce and Smith in their individual and official capacities, in Counts I-III and VI-VIII, should be dismissed because Plaintiff fails to allege that they have authority to remedy the alleged violations. Fed. R.Civ. P. 12(b)(6).

8. Plaintiff's claims for declaratory relief against Defendants in their official capacities, in Counts I-III, are barred by the Eleventh Amendment because, as set forward above, the claims for prospective injunctive should be dismissed. Fed. R.Civ. P. 12(b)(1).

WHEREFORE, Defendants Pai, Booker, Cole, Pierce, and Smith, respectfully request that this Honorable Court grant their Motion to Dismiss, dismiss all claims against them with prejudice and grant all other relief to which they are entitled.

Respectfully submitted,

HALL RENDER KILLIAN HEATH & LYMAN, PC

/s/ Jonathon A. Rabin

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